

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
MAY 5, 2020**

**CALL TO ORDER  
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order via teleconference through WebEx. Board members present were Gina Klempel, Tobias Liechti, Roger Noble, Cal Dyck and Ole Netteberg. Mark Mussman and Donna Valade represented the Flathead County Planning & Zoning Office.

There were 9 members of the public in attendance.

**APPROVAL OF  
MINUTES  
6:02 PM**

Noble, seconded by Klempel, to approve the December 3, 2019 minutes as written.

The motion passed unanimously on a roll call vote.

**ANNOUNCENMENT  
FROM THE  
DIRECTOR  
6:02 PM**

Mussman asked that all callers mute their telephones until the public comment period and until they wanted to make a comment during such time.

He also announced that FCU-20-01 had been postponed until June 2, 2020 BOA meeting.

**ELECTION OF  
OFFICERS  
(Chairman of BOA)  
6:04 PM**

Noble motioned, seconded by Netteberg, that Cal Dyck remain chairman of the Flathead County Board of Adjustment.

Motioned passed unanimously on a roll call vote.

**ELECTION OF  
OFFICERS  
(Vice-Chairman of BOA)  
6:05 PM**

Noble motioned, seconded by Netteberg, that Gina Klempel be vice-chairman of the Flathead County Board of Adjustment.

Motioned passed unanimously on a roll call vote.

**PUBLIC COMMENT  
(Public matters that are  
within the jurisdiction of  
the Board 2-3-103  
M.C.A)  
6:06 PM**

None

**DISCLOSURE OF  
CONFLICT OF  
INTERESTS  
6:07 PM**

None

**REMINGTON  
CONDITIONAL USE  
PERMIT  
(FCU-20-02)  
6:07 PM**

A request by Ryan Remington on behalf of Randal Remington for a conditional use permit for a Manufactured Home Park that will include 13 spaces within the Willow Glen Zoning District. The applicant is proposing shared well and septic system for the lots and access would be from Willow Glen Drive. The property is located at 616 Willow Glen Drive.

**STAFF REPORT  
6:08 PM**

Donna Valade reviewed the Staff Report FCU-20-02 for the board.

**BOARD QUESTIONS  
6:12 PM**

Netteberg questioned if the trailer parks around the subject property were on septic or if they were attached to the city. Staff verified that the development to the east and north were within city limits. The trailer parks behind the property were within county jurisdiction. She also verified that she saw one septic permit for the property that was on S. Woodland Dive, to the northwest of the subject property.

Netteberg said the trailer park near this property was one of the nicer ones in the valley; neat and orderly.

Klempel asked how far they would be in order to tie in to the city [services]. Staff said it did not look very far. City services ran right along Willow Glenn.

When Noble reviewed [the application], he had questions about the well service and the septic waste water disposal. By DEQ standards, it would be considered a public water system due to it being 13 units. Because it was going to have 10 connections or more, or 25 full time users, it would require two wells and not just one shared well. In order to have a well, it was required to have a 100' radial wellhead protection zone. This property was only 164' wide. They could not legally put a well on this property unless they obtained an easement from an adjacent land owner. They would actually need two (2) wells for the number of trailers proposed.

He also commented that he did not see any room for any accommodations for a drain field on the site plan due to the number of trailers proposed and the cul-de-sac near the site. He had concerns over water-supply and wastewater disposal. He did not feel the site map adequately represented what the owner wanted to do on the property. It neglected to be included as a part of the submittal.

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appropriate permits, before submitting final plat. If they were unable to make their water and wastewater work, they would not be able to move forward with final plat and physically put it on the ground.

Noble recognized that but felt the application was incomplete if they were not going to show them how they would accommodate for those things.

Staff deferred to the applicant to address some of those issues during applicant presentation.

**APPLICANT  
PRESENTATION  
6:19 PM**

Ryan Remington, 19 Happy Hollow, was one of the applicants for the application. He addressed connection to city services. He said he had spoken with the city and in order to connect, they were wanting him to connect the sewer line from S. Woodland Drive (600+ feet away) to Leisure Drive (which would be north) and complete a loop for their sewer. It was a substantial cost that was way beyond what they could even consider. On top of that, the water lines were coming from Woodland Avenue, which was even further away. He felt it was out of the question.

Remington had spoken with an engineer about waste water, sewage, and wells. The property may only be 165' wide but it was also 600' + long and they had discussed that. They still had to go through DEQ review but this was just a preliminary application so that they could move forward with the process.

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**BOARD QUESTIONS  
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Klempel wanted to confirm that the payout for the parkland would be \$18,000. Remington said he had looked at that, asked questions, and did not find an exact number. He knew there had to be an estimate given but they had not gotten to that point.

Liechti asked where the applicant planned to put the public water and sewer system on the layout. Remington said they were going to be around the borders or the backside of the manufactured homes. Liechti asked if they were going to run water lines on the back and wondered where there would be room for the septic system and draining fields. Remington clarified that the water, electrical, utility lines were all going to go next to the road. The draining fields would be on the back side of the manufactured homes. There was already an existing well on the property, therefore, they could piggyback off of that and have the draining field

100' away, on the other side [both sides of the road].

Dyck asked the approximate location of the current well. Remington said the existing well was near the middle of lot 12 and 13. There was an existing house on lot 13 and a little on lot 12. That was where the location of the well for the existing house was right now.

**PUBLIC COMMENT**  
**6:25 PM**

None

**BOARD DISCUSSION**  
**6:27 PM**

Liechti was on board with the concerns that Noble had expressed. He would generally be accepting of a well-kept trailer court. He felt like it was a decent area for it but, with what had been submitted and what they were going to have to go through, he did not see how they were going to fit two wells and a community draining field with a 500' mixing zone, plus storm water. He did not see anywhere that would fit without major plan adjustments. He wondered if the applicant would have to come back through after making site adjustments because, as it was now, he did not see how it was going to work.

Mussman said that if it was approved with conditions, it was possible that they could come up with minor modifications to the site plan that could be approved administratively (as long as it did not substantially change the findings or conditions of original approval). If changes were requested that might alter the findings or were contrary to the conditions of approval, it would be considered a substantial change and would have to go back through the conditional use process. Something along the lines of a reduction in density, or something to accommodate the infrastructure requirements, would probably not be a substantial change and could be approved administratively. However, without seeing anything concrete, he could not say for sure. A reduction in density was not considered a substantial change.

Liechti said he would generally be accepting of this but without some sort of consideration for utility lot and utility space, and he understood they were doing their preliminary permits, he did not think there was any way it was going to work.

Noble reiterated his concerns from earlier. He agreed it fit with the neighborhood and recognized what staff was saying but felt the application was incomplete as it did not show where the well was going to be, how they were going to meet setback requirements, or where the drain field was going to go. Based on that, he

could not sign off on Finding of Fact #6. He felt there was inadequate information available.

Klempel said she had read through the entire application and agreed with Liechti and Noble. She felt it was an incomplete application due to the density for where it was at and the ability to meet all the requirements. She just did not see that the information was there.

Netteberg reiterated that we needed affordable housing [in the valley] and compared this proposal to other properties in the area which had 15 homes on them. As long as they had to go through DEQ and subdivision approval, he was in favor of letting them take it to the next step to see if they could make it work.

Mussman addressed the applicant and informed him that it appeared there might be three votes against the application as is, which would be a denial, based on the lack of information regarding the infrastructure for the future subdivision. He suggested as an option for the applicant, other than waiting a year to re-apply, was to request the application be tabled so that he can provide additional information showing the potential feasibility of a subdivision and ability to meet DEQ regulations for water, wastewater, and storm water. Detailed plans were not needed but suggested having comments from the project engineer and perhaps a few more illustrations showing where the infrastructure would be able to go and what his engineer was thinking in order to come back to the Board of Adjustment (BOA) and be significant to send off to the next level. If it was a denial, it would require a year of waiting until they could reapply (as stated in the regulations). Mussman felt it might be more efficient, if the applicant so desired, to table it and come back with the additional information.

Noble asked the chairman and staff about protocol in order to have the application tabled vs. withdrawing the application. The board would have to motion to table the application but the applicant could request that they do so.

Remington said he could have the information by the next meeting. The only reason why it was not on this application was he did not see where they [the application] requested those specifics. He thought it needed to be addressed during the subdivision review but said he could absolutely have it in time for the next meeting.

Ole motioned to table the application until the June meeting. Klempel interjected and said she felt it would be best to table it until the July 7, 2020 meeting for a

better time feature.

**MOTION TO  
(FCU-20-02)  
6:41 PM**

Netteberg made a motion, seconded by Liechti, to table FCU-20-02 until the July 7, 2020 BOA meeting.

**ROLL CALL TO  
TABLE UNTIL JULY 7,  
2020  
BOA MEETING  
(FCU-20-02)  
6:42 PM**

The motion passed unanimously on a roll call vote.

**KEANE APPEAL  
(APPEAL 20-01)  
6:43 PM**

An appeal by Nathan & Dianna Keane regarding a decision made by the Zoning Administrator determining that the denial of an Administrative Conditional Use Permit (FACU-19-41) on January 15, 2020 for short-term rental housing did not take into account all the pertinent factors related to the decision. The property is located at 712 Echo Lake Road, on Deer Island, Bigfork, MT within the Echo Lake Zoning District. The property is zoned SAG-5 (Agricultural), and contains approximately 0.78 acres.

**APPELLANT  
PRESENTATION  
6:46 PM**

Nathan Keane, 20469 Kenilworth Rd, Loma, MT, was the appellant and explained the reason for the appeal was due to the denial of a conditional use permit and the ability to do short term rental with the reasoning being there were no emergency services and an unapproved septic treatment.

He had talked with the Bigfork Fire Chief to find out protocol for properties, such as theirs being, on an island. Protocol included calling emergency services but also involved search and rescue due to them having more resources (i.e. helicopters and boats). The denial of the permit stated there were no emergency services due to not having road access to the island. The island currently had 13 structures on it, all of which had paid property taxes for decades, and therefore services could not be denied. He also mentioned they provided a boat for the renters to have access to the island and back.

He addressed the unapproved septic treatment and said the lot was approved for an incinerating toilet. It was an approved type of septic treatment. They were also working with the DEQ and had hired an engineer to work with them. The

engineer felt they should be able to get approval. They had a grandfathered outhouse on the property and were looking for a rewrite to get septic approval. He said an Environmental Health staff member had gone out to the site and measured out a drain field for the septic system. Environmental Health staff said a system would fit in place. They were working with the engineer and DEQ to get a rewrite to get permission to get a septic system, however, they were currently approved for an incinerating system until they could get the septic system in place.

**BOARD QUESTION**  
**6:50 PM**

Klempel asked Keane what the response time for Search and Rescue would be. Keane said it depended on what Search and Rescue was doing at the time. It could be pretty quick or with an up to 40 minute's response time.

**STAFF REPORT**  
**6:52 PM**

Mark Mussman reviewed the Staff Report Appeal-20-01 for the board.

**BOARD QUESTIONS**  
**6:58 PM**

Klempel asked Mussman if the emergency services, including ambulance services, could ever come to fruition. Mussman said it would never change but, if there was a medical emergency, the ambulance could certainly come to the mainland as the person who needed medical attention could be on the boat [coming to them]. He could see an option where the owner of the property could comprise an emergency plan in order to address the lack of emergency services.

Netteberg clarified that, if the decision of denial was upheld, nothing would stop the applicant from coming back once the septic was put in and ask for the same thing again. Mussman said that was correct.

Netteberg also addressed the lack of emergency services. He shared his personal experience with having to use Search and Rescue. He felt the concern over emergency services could be mitigated.

**PUBLIC COMMENT**  
**7:01 PM**

None *(There was background noise but none that pertained to the file.)*



**APPELLANT  
REBUTTAL  
7:03 PM**

Keane rebutted that there was currently an approval for waste water treatment on the lot and was the reason why they were not approved for a septic system, because they needed a rewrite put in place. They also had an approved treatment for grey water treatment as well. To say that it was not approved was incorrect. Agencies had confirmed that the applicant's current approved treatment was an approved treatment for rental use. He also added that the short term rental season ran through June and half of September. In the meantime, they did have the approved wastewater treatment with the incinerating toilet but they were also working on getting an approval for a full septic system.

He addressed the concern over the emergency services. He stated that [the renters] would know they were going to be on an island. It would be no different if people were on a boat and in need of medical assistance. They did not need to use the public [boat] launch because they owned a private dock near the property and on the mainland. They intended to come up with an emergency plan so that the renters would know what to do [in case of an emergency].

**BOARD DISCUSSION  
7:07 PM**

Liechti said he had not received anything in the application showing an updated septic system or a letter from the county stating the applicants were good to go. The same could be said for the emergency service agencies. He did believe the applicant was working on it and would be able to get it resolved, however, today he did not have anything in front of him stating that it had been resolved.

Klempel agreed with Liechti. The only thing that she saw in the application was a letter from Bigfork Fire Department sharing that they had a concern. She understood why they would have a concern. She stated the public responded differently to emergency situations; like concern over why they were not attended to and taken care of. She was concerned for the county's liability since it was on an island and there was no viable road where the ambulance could get to it if such services were needed. She felt it was sorely lacking [to meet the emergency services requirements] and felt it would never change.

Noble shared the same concern that Klempel expressed. He felt that overturning the denial put the county in a high liability situation. He also agreed with Liechti that the only thing he had seen from the Health Dept. was a letter saying that the dwelling was not connected to a permitted septic system. He would re-entertain the application but recommended the applicant submit a very detailed emergency response plan and letter of intent to serve from emergency service agencies. Once he received the approved septic permit from the county, he did not have a problem with it. Those were the things that needed to happen to move forward with this.



Netteberg did not have a comment.

Dyck concurred with the other board members' concerns and that they would have to uphold the denial.

**MOTION TO DENY  
(APPEAL 20-01)  
7:14 PM**

Noble made a motion, seconded by Klempel, to uphold the denial of (FACU-19-41) and deny Appeal-20-01.

**ROLL CALL TO  
UPHOLD TO DENY  
(APPEAL 20-01)  
7:14 PM**

Motion passed unanimously on a roll call vote.

**OLD BUSINESS  
7:17 PM**

**NEW BUSINESS  
7:17 PM**

The FCU-20-04 application is scheduled to move forward on June 2, 2020. Because that date is an election day, we have no venue, to physically hold the meeting in. Originally there was no meeting scheduled for that date but because of the fact that it is prudent to consider the FCU in a timely manner, the meeting will be held via Webex. Noble asked if it was going to be heard by the West Valley LUAC and Mussman said yes.

Noble asked what had happened with the Ranger Springs Application. Mussman discussed the need to re-notify the adjoining property owners.

They discussed other applications that had been withdrawn or postponed.

**ADJOURNMENT  
7:22 PM**

The meeting was adjourned at approximately **7:22 PM**.

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Cal Dyck, Chairman

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Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED \_\_\_/\_\_\_/2020

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6:05 PM**

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**PUBLIC COMMENT  
(Public matters that are  
within the jurisdiction of  
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None

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CONFLICT OF  
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CONDITIONAL USE  
PERMIT  
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Netteberg clarified that, if the decision of denial was upheld, nothing would stop the applicant from coming back once the septic was put in and ask for the same thing again. Mussman said that was correct.

Netteberg also addressed the lack of emergency services. He shared his personal experience with having to use Search and Rescue. He felt the concern over emergency services could be mitigated.

**PUBLIC COMMENT**  
**7:01 PM**

None *(There was background noise but none that pertained to the file.)*

**APPELLANT  
REBUTTAL  
7:03 PM**

Keane rebutted that there was currently an approval for waste water treatment on the lot and was the reason why they were not approved for a septic system, because they needed a rewrite put in place. They also had an approved treatment for grey water treatment as well. To say that it was not approved was incorrect. Agencies had confirmed that the applicant's current approved treatment was an approved treatment for rental use. He also added that the short term rental season ran through June and half of September. In the meantime, they did have the approved wastewater treatment with the incinerating toilet but they were also working on getting an approval for a full septic system.

He addressed the concern over the emergency services. He stated that [the renters] would know they were going to be on an island. It would be no different if people were on a boat and in need of medical assistance. They did not need to use the public [boat] launch because they owned a private dock near the property and on the mainland. They intended to come up with an emergency plan so that the renters would know what to do [in case of an emergency].

**BOARD DISCUSSION  
7:07 PM**

Liechti said he had not received anything in the application showing an updated septic system or a letter from the county stating the applicants were good to go. The same could be said for the emergency service agencies. He did believe the applicant was working on it and would be able to get it resolved, however, today he did not have anything in front of him stating that it had been resolved.

Klempel agreed with Liechti. The only thing that she saw in the application was a letter from Bigfork Fire Department sharing that they had a concern. She understood why they would have a concern. She stated the public responded differently to emergency situations; like concern over why they were not attended to and taken care of. She was concerned for the county's liability since it was on an island and there was no viable road where the ambulance could get to it if such services were needed. She felt it was sorely lacking [to meet the emergency services requirements] and felt it would never change.

Noble shared the same concern that Klempel expressed. He felt that overturning the denial put the county in a high liability situation. He also agreed with Liechti that the only thing he had seen from the Health Dept. was a letter saying that the dwelling was not connected to a permitted septic system. He would re-entertain the application but recommended the applicant submit a very detailed emergency response plan and letter of intent to serve from emergency service agencies. Once he received the approved septic permit from the county, he did not have a problem with it. Those were the things that needed to happen to move forward with this.

Netteberg did not have a comment.

Dyck concurred with the other board members' concerns and that they would have to uphold the denial.

**MOTION TO DENY  
(APPEAL 20-01)  
7:14 PM**

Noble made a motion, seconded by Klempel, to uphold the denial of (FACU-19-41) and deny Appeal-20-01.

**ROLL CALL TO  
UPHOLD TO DENY  
(APPEAL 20-01)  
7:14 PM**

Motion passed unanimously on a roll call vote.

**OLD BUSINESS  
7:17 PM**

**NEW BUSINESS  
7:17 PM**


The FCU-20-04 application is scheduled to move forward on June 2, 2020. Because that date is an election day, we have no venue, to physically hold the meeting in. Originally there was no meeting scheduled for that date but because of the fact that it is prudent to consider the FCU in a timely manner, the meeting will be held via Webex. Noble asked if it was going to be heard by the West Valley LUAC and Mussman said yes.

Noble asked what had happened with the Ranger Springs Application. Mussman discussed the need to re-notify the adjoining property owners.

They discussed other applications that had been withdrawn or postponed.

**ADJOURNMENT  
7:22 PM**

The meeting was adjourned at approximately **7:22 PM**.

  
\_\_\_\_\_  
Cal Dyck, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 6/2/2020